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Order 2000-5-13
Served: May 11, 2000

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 11th day of May, 2000

Joint Application of

**AMERICAN AIRLINES, INC.,
SWISSAIR, SWISS AIR TRANSPORT
COMPANY, LTD. and
N.V. SABENA S.A.**

Docket OST-1999-6528 - /2

under 49 U.S.C. §§ 41308 and 41309 for approval
of and antitrust immunity for alliance agreements

FINAL ORDER

By this Order, we make final our tentative findings in Order 2000-4-22, dated April 21, 2000, and grant final approval and antitrust immunity for (1) an Alliance Agreement¹ between American Airlines, Inc. ("American") and Swissair, Swiss Air Transport Company, Ltd. ("Swissair"); (2) an Alliance Agreement² between American and N.V. Sabena S.A. ("Sabena"); and (3) a Coordination Agreement³ among American, Sabena, and Swissair, including their affiliates, collectively referred to as the "Alliance Agreements," under 49 U.S.C. §§ 41308 and 41309. Our action here is subject to the various terms, conditions, provisions and limitations proposed in Order 2000-4-22.

I. Background

A. The Application

On November 19, 1999, the Joint Applicants filed a request seeking approval of and antitrust immunity for the Alliance Agreements, for at least a five-year term. They stated that the purpose of the arrangement is to establish a legal framework enabling them to expand their existing code-share relationship, while permitting each of the three partners to retain its independent corporate and national identity.⁴ While the arrangement does not involve any exchange of equity or other

¹ See Exhibit JA-1.

² See Exhibit JA-2.

³ See Exhibit JA-3.

⁴ Application at 3.

forms of cross-ownership,⁵ they stated that the objective of the Alliance Agreements is to enable the partners to plan and coordinate service over their respective route networks as if they were a single entity. They also stated that they will not go forward with the alliance absent antitrust immunity.⁶

B. Order to Show Cause

On April 21, 2000, the Department issued an Order to Show Cause, Order 2000-4-22. We tentatively determined, subject to certain conditions and limitations, to grant approval of and antitrust immunity for the Alliance Agreements. We also tentatively directed the Joint Applicants to resubmit their Alliance Agreements five years from the date of issuance of the final order in this case. We also tentatively determined that if the Joint Applicants choose to operate under a common name or brand, they would have to comply with our relevant procedures before implementing the change.

We also tentatively directed the Joint Applicants to withdraw from participation in any International Air Transport Association (“IATA”) tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and Belgium-Switzerland, and/or between the United States and any other countries whose designated airlines participate in similar agreements with U.S. airlines that have been or are subsequently granted antitrust immunity or renewal thereof by the Department; and file all subsidiary and/or subsequent agreement(s) with the Department for prior approval. We also tentatively directed the foreign applicants to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic (“O&D Survey”) data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by American).

We provided the Joint Applicants and any interested party an opportunity to comment on our tentative findings and conclusions.

II. Decision

We have received no responses to our tentative decision.

We also see no reason to amend or modify our tentative decision.

In these circumstances, we make final our tentative findings in Order 2000-4-22, and we grant approval and antitrust immunity to the proposed Alliance Agreements. We also direct the Joint Applicants to resubmit the Alliance Agreements five years from the date of issuance of this order. However, the Department is not authorizing the Joint Applicants to operate under a common

⁵ Application at 6.

⁶ Application at 15. Also, see Article 3.2 of each Alliance Agreement.

name. If the Joint Applicants wish to operate under a common name, they will have to comply with our relevant procedures before implementing the change.

We also direct the Joint Applicants to withdraw from all IATA tariff conference activities relating to through fares, rates or charges between the United States and Belgium-Switzerland, as well as between the United States and the homeland of any other foreign airline granted antitrust immunity or renewal thereof, by the Department for participation in similar alliance activities with a U.S. airline; and file all subsidiary and/or subsequent agreements with the Department for prior approval.⁷ We also direct the foreign applicants to report full-itinerary O&D Survey data for all passenger itineraries that contain a United States point (similar to the O&D Survey data already reported by American), as described in Order 2000-4-22.⁸

ACCORDINGLY:

1. We grant approval and antitrust immunity as limited and discussed by this order to the Alliance Agreements between and among American Airlines, Inc., **N.V. Sabena S.A.**, and Swissair, Swiss Air Transport Company, Ltd., effective August 6, 2000, subject to the limits and conditions indicated in Appendix A, to the extent that it applies to the Chicago-Brussels, and Chicago-Zurich markets;
2. We direct American Airlines, Inc., **N.V. Sabena S.A.**, and Swissair, Swiss Air Transport Company, Ltd. to resubmit their Alliance Agreement(s) five years from the date of issuance of this order;
3. We direct American Airlines, Inc., **N.V. Sabena S.A.**, and Swissair, Swiss Air Transport Company, Ltd., or any other airline involved in such arrangements, to file for prior approval a copy of any agreement(s) that may affect the **American-Sabena-Swissair** alliance services (including, but not limited to, the Oneworld Alliance);
4. We condition our grant of approval and immunity to require American Airlines, Inc., **N.V. Sabena S.A.**, and Swissair, Swiss Air Transport Company, Ltd. to withdraw from participation in any International Air Transport Association ("IATA") tariff conference activities that discuss any proposed through fares, rates or charges applicable between the United States and **Belgium-Switzerland**, and/or between the United States and any other countries whose designated airlines

⁷ Regarding this requirement, we do not expect the alliance partners to provide the Department with minor technical understandings that are necessary to blend fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct the Joint Applicants to provide the Department with all contractual instruments that may materially alter, modify, or amend the Alliance Agreements.

⁸ As indicated in Order 2000-4-22, we will provide confidentiality protection for these data, as we do for international **O&D** data submitted by U.S. airlines, and we will not disclose this information to any other airlines.

participate in similar agreements with U.S. airlines that have been or are subsequently granted antitrust immunity or renewal thereof by the Department;

5. We direct **N.V. Sabena S.A.** and Swissair, Swiss Air Transport Company, Ltd. to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by American Airlines, Inc.). The full itinerary record is defined as the passenger's complete itinerary from origin to destination as opposed to the abbreviated gateway record reported under **T100(f)**;

6. We direct American Airlines, Inc., **N.V. Sabena S.A.**, and Swissair, Swiss Air Transport Company, Ltd. and their subsidiaries to obtain prior approval from the Department if they choose to operate under a common name or use "common brands";

7. This order is effective immediately;

8. We may amend, modify, **or revoke** this authority at any time without hearing; and

9. We shall serve this order on all persons on the service list in this docket.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

**CONDITIONS GOVERNING THE ANTITRUST IMMUNITY
FOR THE ALLIANCE AGREEMENTS BETWEEN
AMERICAN AIRLINES, INC.
SWISSAIR, SWISS AIR TRANSPORT COMPANY, LTD.
AND N.V. SABENA S.A.**

Grant of Immunity

The Department grants immunity from the antitrust laws to American Airlines, Swissair, and Sabena, and their affiliates, for their Alliance Agreements and Coordination Agreement (the “Alliance Agreements”) dated November 18, 1999, between and among American, Swissair, and Sabena and for any agreement incorporated in or pursuant to the Alliance Agreements.

Limitations on Immunity

The foregoing grant of antitrust immunity shall not extend to the following activities by the parties: pricing, inventory or yield management coordination, or pooling of revenues, with respect to unrestricted coach-class fares or any business or first-class fares for local U.S.-point-of-sale passengers flying nonstop between Chicago and Brussels and between Chicago and Zurich; or the provision by one party to the **other of** more information concerning current or prospective fares or seat availability for such passengers than it makes available to airlines and travel agents generally.

Exceptions to Limitations on Immunity

Despite the foregoing limitations, antitrust immunity shall extend to the joint development, promotion or sale by the parties of the following discounted fare products with respect to local U.S.-point-of-sale passengers **flying** nonstop between Chicago and Brussels and between Chicago and Zurich: corporate fare products; consolidator/wholesaler fare products; promotional fare products; group fare products; **and fares** and bids for government travel or other traffic that either party is prohibited by law from **carrying** on service offered under its own code. For immunity to apply, however: (1) in the case **of** corporate fare products and group fare products, local U.S. point-of-sale non-stop traffic **shall** constitute no more than 25% of a corporation’s or group’s anticipated travel (measured in flight segments) under its contract with **American-Swissair-Sabena**; and (2) in the case of consolidator/wholesaler fare products and promotional fare products, the fare products **must** include similar types of fares for travel in at least 25 city-pairs in addition to Chicago-Brussels and Chicago-Zurich.

Definitions for Purposes of this Order

“Corporate fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices to corporations or other entities for authorized travel, which discounts may be stated as percentage discounts from specified published fares, net prices, volume discounts, or other forms of discount.

“Consolidator/wholesaler fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices to (1) consolidators for sale by such consolidators to members of the general public either directly, or through travel agents or other intermediaries, at prices to be decided by the consolidator, or (2) wholesalers for sale by such wholesalers as part of tour packages in which air travel is bundled with other travel products, which discounts, in either case, may be stated either as net prices due the parties on sales by such consolidator or wholesaler, or as percentage commissions due the consolidator or wholesaler on such sales.

“Promotional fare products” means published fares that offer directly to the general public for a limited time discounts from previously published fares having similar travel restrictions.

“Group fare products” means the offer of non-published fares at discounts from the otherwise applicable tariff prices for the members of an organization or group to travel from multiple origination points to a single destination to attend an identified special event, which discounts may be stated either as percentage discounts from specified published fares or net prices.

Clarification of Scope of Limitation on Immunity

Under no circumstances shall the limitations on antitrust immunity set forth above be construed to limit the parties’ antitrust immunity for activities jointly undertaken pursuant to the Alliance Agreements other than as specifically set forth in this Order. Immunized activities include, without limitation: decisions by the parties regarding the total number frequencies and types of aircraft to operate on the Chicago-Brussels and Chicago-Zurich routes, and the configuration of such aircraft; coordination of pricing, inventory and yield management and pooling of revenues, with respect to non-local passengers traveling on non-stop flights on the Chicago-Brussels and Chicago-Zurich routes; and the provision by one party to the other of access to its internal reservations system to the extent necessary for use exclusively in checking-in passengers or making sales to or reservations for the general public at ticketing or reservations facilities.

Review of Limitations on Immunity

Within eighteen months from the date that this Order becomes final, or at any time upon application of the parties, the Department will review the limitations on antitrust immunity set forth above to determine whether they should be discontinued or modified in light of: current competitive conditions in the Chicago-Brussels and Chicago-Zurich markets; the efficiencies to be achieved by the parties from further integration that would be made possible by discontinuation of the limitations on immunity, when balanced against any potential for harm to competition from such a discontinuation; regulatory conditions applicable to competing alliances; or other factors that the Department may deem appropriate.